



Inside This Issue

From the Director's Desk

Letter from the Chairman

**Background Checks for
New Licensees**

**Seller Property
Disclosure Form
Changing July 1**

**HUD Offers RESPA
Reforms**

**Notice of Public Hearing
to Adopt Rules**

New Licensees

**Spring Caravan
Registration**

**HUD/DOJ Offer Guidance
on "Reasonable
Modifications"**

Appraiser's Update

South Dakota Real Estate Commission Seeks Input on Proposed Forms

The SDREC Forms Task Force has proposed substantial changes to some of the prescribed real estate forms as well as the creation of two new forms. These changes will be considered for approval by the Commission at the June meeting.

The existing forms affected by the revisions are:

- Agency Agreement Addendum
- Exclusive Buyer Agency Agreement
- Listing Agreement
- NonExclusive Buyer Agency Agreement
- Purchase Agreement
- Real Estate Relationships Disclosure

New forms being proposed are:

- Contingency Removal
- Counteroffer

The Forms Task Force was comprised of real estate licensees from across South Dakota. The group has worked for the last several months to determine what changes needed to be made and what forms needed to be updated.

All of these forms have been posted on the SDREC website at www.state.sd.us/sdrec. Licensees are encouraged to review them and provide feedback to the Commission office. Comments may be emailed to: dee.jones@state.sd.us no later than April 30 for consideration by the Commission.

**Not registered for the Spring Caravan yet?
There's still time!**

Registration form is on the back of this
newsletter.



A Letter From the Chairman

Spring is here and what an appropriate time for the education

caravan to go "Green"! The Real Estate Commission is pleased to bring Marie Spodek to South Dakota once again to present an exciting new topic that is taking hold in the real estate industry. Marie's topics are the environmental benefits of Green Building as well as information on Errors & Omissions Insurance – what it covers and what it doesn't. I encourage all licensees to attend one of the scheduled caravan sites.

I would like to take this opportunity to thank the members of the Forms Task Force for their diligent work in revising the SDREC forms. The Commission's goal is to reduce liability for licensees. The proposed forms are also more consumer-friendly and easier to understand. If you have not already done so, please take a few minutes to review these forms – they are posted on the SDREC website at www.state.sd.us/sdrec. Your feedback is an important part of this process and we appreciate your comments.

I hope the spring season brings with it new beginnings and professional growth.

Sincerely,
Brian Jackson



From the Directors Desk

The robins have returned, so it must be spring. Another sign that spring is

here is the upcoming Spring Caravan. Marie Spodek will be returning to tell us about two important topics — Green Buildings and Errors and Omissions Insurance. The topic of errors and omissions insurance was chosen to address questions about what types of acts it will cover. I've received inquiries regarding all aspects of errors and omissions insurance — some of which I can't answer. Hopefully, this session will get those questions answered. And, if "Green" isn't in your vocabulary right now, it should be. Real estate professionals are predicting the Green market is here to stay, so I encourage you to learn as much as you can about this subject. You'll want to be prepared for the questions your clients may be asking.

The Commission's Specialized Real Estate Advisory Group recently met in Pierre. The meeting agenda addressed commercial brokerage with the main concern being that of licensees acting outside their areas of expertise. Commercial education, license portability and unlicensed activity were discussed in length. According to Commission records, over 400 licensees engage in the practice of commercial brokerage.

Governor Rounds has signed HB1107 which will go into effect on July 1st. This was an omnibus bill sponsored by the Governments Operations and Audit Committee which affected nearly all the boards and commission. In a nutshell, the bill requires maximum fees to be set in statute and the actual fee to be set by rule. This will not affect the Commission's application and renewal fees because those fees are already set in statute and rule. However, the Commission will need to promulgate rules for some of its administrative fees. These fees already exist in statute and on July 1st those will be listed as the maximum fee to be charged by the Commission. The fees proposed in rule will not change from

what is already in statute. The Commission will hold a rules hearing at its May meeting to receive public comment on the proposed rules. Please refer to the notice of rules hearing in this newsletter for the hearing details. The information is also posted on the Commission's website.

Enjoy the beautiful South Dakota spring!

DjN

Statewide Criminal History Mandatory for All New License Applicants

The SDREC office has begun running statewide criminal background checks on all candidates seeking licensure.

Currently, these checks provide criminal history information only through the SD court system. The Commission will seek a change in statute during the next legislative session that would require each new license applicant to undergo an FBI background check which would provide criminal history information regardless of where the court action took place.

Roughly half of all states perform some type of background check on license applicants, including the surrounding states of Iowa, Nebraska and Wyoming.

Brokers - please be aware that it will take the commission office approximately 2-3 weeks to process an application and send out a license. Until the license is issued, a person may not conduct business as a real estate agent.



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of Bruce Maxwell, real estate broker from Parkston, who recently passed away.

Law Change Will Affect Seller's Disclosure Form

Governor Mike Rounds has signed Senate Bill 97 into law which will result in a slight change to the Seller's Property Condition Disclosure Statement.

The new law takes effect on July 1 and will require disclosure of recent materials or services provided in the last 120 days that would create a lien against the property.

The updated form will be posted on the SDREC website on July 1st. A reminder to licensees of the effective date of the new form will also be published in the June/July issue of the Real Estate VIEW Newsletter.

HUD (finally) Offers Pro-Consumer RESPA Reforms

Used with permission from ALQ/Real Estate Intelligence Report

Thirty years after writing an unreadable and often unenforceable law, and six years after promising to reform it, the Department of Housing and Urban Development has proposed changes to the Real Estate Settlement and Procedures Act that theoretically will make it easier for consumers to comparison shop for loans and eliminate surprise fees at the closing table.

The proposal is being put out for comments from housing leaders and members of Congress. If all goes well, it could go into effect sometime next year.

Key proposals demand that so-called "junk fees" be explained before closing so that consumers know what they are paying for and can find alternative mortgage packages if they so choose. HUD estimates the provision could save home buyers almost \$700 per closing.

The proposal rewrites mortgage disclosures, demanding that all key terms be disclosed on the first page of a simple, four-page good-faith estimate. The estimate would disclose whether the loan's interest rate could increase and

whether the loan includes a prepayment penalty, as well as what the borrower can expect to pay upfront for appraisals and title insurance.

Yield spread premiums also are disclosed, but are included in the category of "Service Charge." To review HUD's proposal, go to: www.HUD.gov/respa.

South Dakota Real Estate Commission Notice of Public Hearing to Adopt Rules

A public hearing will be held in the second floor conference room of the George Mickelson Criminal Justice Center, 1302 East Highway 14, Pierre, South Dakota at 9:00 a.m. CDT on May 8, 2008 to consider the adoption of proposed rules §§ 20:69:03:26, 20:69:03:27, and 20:69:14.01:11, and amended rules §§ 20:69:13:17 and 20:69:14:08.

The effect of rules changes will be to establish fees for a certificate of licensure, additional license, change of business address, change of association, duplicate license, and late renewal fees.

The reason for adopting the proposed rules is to conform the rules to statutes.

Persons interested in presenting date, opinions or arguments for or against proposed rules may do so by appearing in person at the hearing or by mail to Dee Jones Noordermeer, Executive Director, South Dakota Real Estate Commission, 221 W. Capitol, Suite 101, Pierre, SD 57501 on or before May 6, 2008, in order to be taken into consideration.

After the hearing, the commission will consider all written and oral comments it receives on the proposed rules. The commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically

accessible place. Please notify the South Dakota Real Estate Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3600.

Copies of the proposed rules may be obtained without charge from the South Dakota Real Estate Commission, 221 W. Capitol, Suite 101, Pierre, SD 57501.

South Dakota Real Estate VIEW

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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

New Guidance on “Reasonable Modifications” Under the Fair Housing Act

Press Release from HUD

New guidance released by the Departments of Housing and Urban Development (HUD) and Justice (DOJ) reinforced the right of persons with disabilities to make “reasonable modifications” to their dwellings if a structural change to their dwelling or to a common area of the building or complex in which they live is needed so that they can fully enjoy the premises.

The guidance is designed to help housing providers and homeowners’ associations better understand their obligations and help persons with disabilities better understand their rights regarding the “reasonable modifications” provision of the federal Fair Housing Act (FHA).

“The right to reasonable modifications is essential to ensuring that persons with disabilities can fully enjoy the homes in which they live,” said Grace Chung Becker, Acting Assistant Attorney General for the Justice Department’s Civil Rights Division. “This guidance will help housing providers understand their obligations under this important component of the Fair Housing Act.”

“Persons with disabilities have the right to have the place they call home altered in a way that will enable them to fully enjoy it,” said Kim Kendrick, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity. “This guidance is a major step toward enforcing that right today, and for generations to come.”

The FHA prohibits discrimination in housing based on disability, race, color, religion, national origin, sex and familial status. HUD and DOJ share responsibility for enforcing the FHA. HUD is the agency with the primary responsibility to investigate individual complaints of discrimination. The Secretary of HUD, on his own initiative, may file complaints alleging discrimination. In addition, the Attorney General may commence a civil action in federal court when he has reasonable cause to believe that person(s) are engaged in a pattern or practice

of discrimination or that a group of persons has been denied rights protected by the FHA.

One type of discrimination prohibited by the FHA is the refusal by housing providers or homeowner associations to permit a reasonable modification – i.e. a structural alteration – of existing premises, occupied or to be occupied by a person with a disability, when the modification may be necessary to afford the person full enjoyment of the premises. Although the housing provider or homeowner association must permit the modification, the tenant (or prospective tenant) is responsible for paying the cost of the modification. Examples of reasonable modifications include widening doorways to make rooms more accessible to persons who use wheelchairs or installing a ramp to provide access to a public or common use area, such as a clubhouse.

The new guidelines, issued in the form of questions and answers, cover such topics as:

What is a reasonable modification?

Who must comply with the reasonable modification requirement?

Who is responsible for expenses associated with the upkeep or maintenance of a reasonable modification?

When and how should an individual request permission to make a modification?

What types of documents and assurances may housing provider require regarding the modification before granting the modification?

What procedures are available to a person wishing to challenge a denial of a requested modification?

The guidelines are available online at www.usdoj.gov/fairhousing and www.hud.gov/offices/fheo/disabilities.

Continuing Education Corner

By Karen Callahan, Education Director

It’s now April, the details for the Spring Caravan have been finalized and registrations are streaming in to the SDREC office.

Despite the spring course still being a month away, the SDREC staff is already working on the fall caravan.

Caravan attendees include not only broker/broker associates, but property managers, real estate auctioneers and home inspectors. Additionally, the educational priorities of brand new licensees are much different than those people who have been in the business for a long time.

All of these factors are taken into consideration when selecting a speaker and course topic. As a government agency, the SDREC offers the caravans in order for licensees to stay abreast of current issues related to the regulatory aspects of the real estate business, i.e. “required subject areas”.

The Spring Caravan attendees will have the opportunity to provide feedback to the Commission staff regarding what education is presented in the future. New evaluation forms have been designed to provide an assessment of what courses are desired as well as to determine the overall views toward real estate education.

Please take a few extra moments at the end of the caravan course to offer your suggestions and comments on the evaluations. Your input is vital in determining the directives for the real estate continuing education program in South Dakota.



Calendar of Events

April 8-9

Commission Mtg., Pierre

May 7-8

Commission Mtg., Pierre

May 26

**SDREC Office Closed –
Memorial Day**

New Licensees

Broker

Christensen, Erik M – Luverne, MN
Exsted, Willard W – Glencoe, MN
Helmstetter, Charles – Fargo, ND
Hinzmann, Cal V – Creighton, NE
Janklow, William J – Brandon
Kawulok, Stephen J – Fort Collins, CO
Lewis, David W – Broomfield, CO
Marreel, Joel W – Hooper, NE
Tierney, Martha C – Overland Park, KS
Turner, Pamela (PJ) J – Golden, CO

Broker Associates:

Ahlers, Jodie R – Wentworth
Bicknase, Sarah L – Sioux Falls
Bierle, Steven A – Canton
Boersma, Scott K – Clear Lake
Buxton, Jennifer A – Sioux Falls
Cady, Steven P – Sturgis
DiRose, Lisa M – Watertown
Filipek, Misti M – Rapid City
Fuchs, Anne M – Custer

Gostola, Bridget J – Lead
Graumann, Joni M – Rapid City
Grimsrud, Wayne M – Rapid City
Gullickson, Brad L – Brandon
Harstad, David H – Rapid City
Hawe, Larry E – Fort Collins, CO
Hoey, James – Rapid City
Hoff, Douglas H – Spearfish
Jensen, Sarina M – Spearfish
Kenaley, Patrick L – Jefferson
Lago, Jenna A – Sioux Falls
McIver, Constance F – Rapid City
McIver, Jeremy D – Rapid City
Miner, Holli M – Rapid City
Murphey, Duane G – Custer
Pederson, Jim E – Newcastle, WY
Porter, Jeanette A – Sioux Falls
Rokusek, Jerad L – Sioux Falls
Sager, Gerald B – Sioux Falls
Sherman, Kathleen J – Belle Fourche
Tipton, Shane R – Rapid City
Tolmachoff, Geoffry M – Fort Collins, CO
Tschetter, Craig W – Spearfish
VerMeer, Brook E – Sioux Falls

Weir, JoAnne K – Brandon
Williams, Pamela J – Watertown

Home Inspectors

German, Marlin T – Watertown

Residential Rental Agent

Livingston, Mandy M – Watertown
Miles, Lisa M – Madison
Smith, Kristen L – Sioux Falls

Salesperson

Arndorfer, Jodi K – Hettinger, ND
Cota, Raymond P – Sioux City, IA



APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608.



**Sherry Bren,
Executive
Director
(605)
773-4608
445 E. Capitol
Pierre, SD 57501**

New Licensees – February/March 2008

Scott J. Peterson, State-Registered –
Brookings, SD
Kyle L. Wigington, State-Certified
General – Colorado Springs, CO

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education

courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

Information Vacancy – Advisory Council

The Department of Revenue and Regulation is seeking nominations for a State-Certified Residential Appraiser to serve as a member of the Appraiser Advisory Council.

The Advisory Council is responsible for advising the Department Secretary in matters of program administration, procedure, and policy in order to sustain a program that is consistent with Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 administered by the Appraisal Subcommittee, the uniform standards and the qualifications criteria as set by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation. The council members do not receive compensation for any expenses incurred to serve on the council. Four meetings are held each year in Pierre. The term limit is four years.

If you are interested in nominating yourself or another appraiser for appointment to the Advisory Council, please submit your nomination in writing to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, South Dakota 57501.

The nomination should include the appraiser's name, address, appraiser title and the reason that you believe you or the person you have nominated should be appointed to the Advisory Council. Any person nominated for the position should possess substantial knowledge regarding appraising, a reasonable understanding of Title XI, FIRREA and its impact on the appraiser profession, and be highly respected by other appraiser professionals.

Please submit nominations to the Department no later than May 1, 2008. If you have any questions, please feel free to contact Sherry Bren at 773-4608.

USPAP Q & A

Vol. 10, No. 2, February 2008

Appraiser Qualifications in Report

Question: I've seen several narrative appraisals that include a copy of the appraiser's resume, professional qualifications, or curriculum vitae (CV). Does USPAP require an appraisal report to include the appraiser's qualifications?

Appraisal Report Received by Others

Question: I was recently contacted by a lender regarding an appraisal I had performed for another client. The lender had somehow obtained a copy of my appraisal report and had some questions they wanted me to answer. However, this lender was not my original client and was not named as an intended user. Are there any USPAP prohibitions against discussing my appraisal with this lender?

Changing the Effective Date

Question: I recently had a client contact me and ask me to change the effective date of my appraisal, to make it one week after the effective date shown in my report. Does USPAP permit me to simply change the effective date without taking additional steps?

Vol. 10, No. 3, March 2008

Does Appraising a Physical Segment Require Use of a Hypothetical Condition?

Question: I received a request to perform an appraisal on an improved property; however, the client only wants me to provide an opinion of land value, giving no value to the improvements. Does such an assignment require the use of a hypothetical condition, since the improvements exist but are not being included in the value?

Must a Hypothetical Condition or Extraordinary Assumption be Labeled?

Question: If I employ a hypothetical condition or an extraordinary assumption in an assignment, does USPAP require me to label it as such?

Is a Letter of Transmittal Part of an Appraisal Report?

Question: I recently completed an appraisal report that included a letter of transmittal as part of my report. Some of the items required to comply with the reporting requirements of USPAP appear only in the letter of transmittal. My client states that a letter of transmittal is not part of the appraisal report, and these items must appear within the body of the report to comply with USPAP. Is my client correct?

Answers to the above questions can be found at:
www.appraisalfoundation.org.

[For further information regarding USPAP Q&As contact The Appraisal Foundation at:
www.appraisalfoundation.org]

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Department of Revenue and Regulation, Appraiser Certification Program:

Kay M. Swanhorst, Aberdeen – Complaint Case # 07-256. The Department of Revenue and Regulation issued a Final Order Suspending Kay M. Swanhorst's State-Licensed Appraiser Certificate for thirty (30) days effective March 4, 2008 and assessed a \$1,000 unprofessional conduct penalty fee for violations of ARSD 20:14:06:01 (violation of Uniform Standards of Professional Appraisal Practice ETHICS RULE, Standard 1 and Standard 2).

Review of Cases – 01/01/2008 through 02/21/2008

For the period January 1, 2008 through February 21, 2008 the Department has received 10 upgrade applications, 1 new application claiming experience and initiated 2 complaint investigations.

Upgrades – 8 pending, and 2 issued
New Application Claiming Experience – 1 pending
Complaints – 2 pending

Notice Effective January 1, 2008 New Appraisal Experience Log

The Appraiser Certification Program has revised the Appraisal Experience Log effective January 1, 2008 to comply with the Appraiser Qualifications Board (AQB) of the Appraisal Foundation requirements. The AQB states that verification for experience credit claimed by an applicant shall be on forms prescribed by the state certification/licensing agency, which shall include:

1. Type of property;
2. Date of report;
3. Address of appraised property;
- 4. Description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;**
5. Number of actual work hours by the trainee/applicant on the assignment; and
6. The signature and state certification number of the supervising appraiser if applicable. Separate appraisal logs shall be maintained for each supervising appraiser if applicable.

It is the intent of the AQB that the verification of experience clearly identifies three things under item #4:

- (1) A description of the work performed by the trainee or applicant;

(2) The scope of the review performed by the supervising appraiser; and

(3) The level of supervision performed by the supervising appraiser.

Although the scope of review and level of supervision performed by the supervising appraiser might appear to be redundant at first glance, they are not. For example, in certain assignments a supervising appraiser might determine that a lesser level of supervision is required, but that might not impact the level of review performed.

The AQB recognizes that assignments may differ significantly; therefore the level of review and supervision by the supervising appraiser may also differ from assignment to assignment. Also, depending on the assignments involved, it might be expected that the supervising appraiser's level of review and supervision diminish over time as the trainee/applicant gains competency.

Experience Criteria

According to the AQB the quantitative experience requirements must be satisfied by time spent on the appraisal process. The appraisal process consists of: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP.

The Appraiser Certification Program Appraisal Experience Log form is available on our Website at: www.state.sd.us/appraisers

Supervisor Program Project

A committee has been appointed by the Executive Director of the Appraiser Certification Program with the support of the Professional Appraisers Association of South Dakota (PAASD) and the South Dakota Chapter of the American Society of Farm Managers and Rural Appraisers (SD Chapter of the ASFMRA) to study other jurisdiction's mentor/trainee programs for possible development and implementation in South Dakota. The goal of the Supervisor Program is to

promote and maintain responsible supervising appraisers that are competent and qualified to train, guide and directly supervise entry level appraisers. A Supervisor Program must promote entry into the appraiser profession in South Dakota and would require majority support of the industry before regulations would be proposed to implement a program.

The committee members are Jim Dunlap, Sioux Falls; Terry Leibel, Pierre; and Daryl Washechek, Rapid City. The committee is charged with the following tasks:

- Contact the jurisdictions to identify the ones that currently have a supervisor (mentor) program in operation.
- Request information from the identified jurisdictions regarding the supervisor (mentor) programs that have been developed, implemented and administered.
- Study the programs submitted by other jurisdictions to determine the program or programs that have had measurable success in developing qualified supervisors, lowered the number of cited violations against entry level appraisers under review, and would be applicable for South Dakota's desired result.
- Develop a draft proposal for a program that would be tailored to South Dakota. If the proposal includes expenditure of funds by the Appraiser Certification Program it must also include the process for recovery of costs.
- Present the proposal to the Appraiser Certification Program Advisory Council for review. (The committee may present more than one proposal.)

If you have any questions or comments, please contact Sherry Bren, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, South Dakota 57501. Comments or questions may also be submitted by facsimile at 605.773.5369 or by e-mail at Sherry.Bren@state.sd.us.

2008 Spring Caravan Registration Form–Green Building/E&O Insurance

One registration form per person!

Name _____ License Number and Type _____

(Mailing Address) (City) (State) (Zipcode) (Daytime Phone)

Email Address: _____

Please check which you would like to attend. Registrations left blank will be returned.

- | | | |
|--|---|---|
| <input type="checkbox"/> Sioux Falls Ramkota – Tues., April 29 | <input type="checkbox"/> Sioux Falls Ramkota – Wed., April 30 | <input type="checkbox"/> Watertown Ramkota – Thurs., May 1 |
| <input type="checkbox"/> Aberdeen Ramada – Fri., May 2 | <input type="checkbox"/> Pierre Ramkota – Mon., May 5 | <input type="checkbox"/> Spearfish Holiday Inn – Tues., May 6 |
| <input type="checkbox"/> Rapid City Ramkota – Wed., May 7 | | |

Registrations received by phone or fax will NOT be accepted. The registration fee of \$50 must accompany this form. The Commission will retain \$20 of any refunded registration fee.
Registrations should be mailed to SDREC, 221 W. Capitol Ave., Suite 101, Pierre, SD 57501.

Registrations are due by Friday, April 25th.

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